

TENANCY

A GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES

THIS PROJECT HAS BEEN FUNDED BY:

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and put together by

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THE AIMS OF THIS PROJECT:

The Assyrian Resource Centre Fairfield together with the NSW Office of Fair Trading have compiled this booklet together with a seminar to help educate the Assyrian community, mainly new arrivals, about their rights and responsibilities when renting a home in NSW.

The many obligations that tenants face when dealing with landlords, agents and other government organisations can be frustrating and confusing. These obligations can easily be overlooked by any new arrival that has little understanding of the Australian system. Tenants may be obliged to face consequences by failing to comply with these regulations. It is therefore our aim to help clarify these procedures.

WHERE TO LOOK FOR A HOME

Listed below are some ways which you can go about searching for a rental property.

1) Newspapers (private arrangement)

The first place to look is in the 'To Let' column in the classifieds section of your local newspaper. In Fairfield, there are two local newspapers which are issued each Wednesday they are the Champion and Advance.

2) Community Notice Board

As well as newspapers, noticed boards in shopping centres or local libraries may be a good way to find accomodation privatly.

3) Real Estate agents

Talking to a property manager from a real estate office who will show you what properties they have available. If they don't have what you are looking you may leave your contact details with them so they can get in touch with you should anything your interested becomes available.

4) Department of Housing

The NSW Department of Housing is one of the largest providers of social housing in the world, providing a range of housing solutions to meet the needs of today's community. In partnership with the community, industry and individuals, the Department provides safe, decent and affordable housing opportunities for those most in need so that they can live with dignity, find support if needed and achieve sustainable futures.

5) Hume Community Housing

Another organisation which are similar in some ways to the department of housing. They help in arranging accomodation and the selection process is not as strict.

SIGNING AN AGREEMENT

WHAT IS A RESIDENTIAL TENANCY AGREEMENT?

A residential tenancy agreement outlines the rights and responsibilities of tenants and landlords. Agreements are usually written in a standard form, but they can also be oral, for example, a conversation between you and the landlord. Agreements can also be partly in writing and partly oral. Whether oral or written, all residential tenancy agreements must follow the *Residential Tenancies Act (NSW)*. You have the right to a written agreement and a copy of that agreement.

When signing the agreement, the landlord (or agent) must give you a copy of *The Renting Guide* booklet written by the Office of Fair Trading.

WHAT IS A BOND?

A bond is money you pay at the start of the tenancy as a security in case you don't follow the terms and conditions of the agreement.

You must fill out a 'Bond Lodgment' form which is signed by both you and the landlord/agent. The form must be lodged by the landlord/agent at the Office of Fair Trading, Renting Services within seven days'.

If you don't receive an advice of bond lodgment, telephone The Office of Fair trading, Renting Services on 13 32 20.

TYPES OF AGREEMENTS

There are two types of residential tenancy agreements:

- fixed term – this is for a specific period of time, e.g. six months.
- continuing – there is no specified period. A fixed agreement automatically becomes a continuing agreement once the end of the date has expired/ended.

HOW MUCH DO YOU PAY AT THE START?

You will usually have to pay the following costs:

- preparation of the agreement – up to \$15
- two weeks' rent in advance (less any reservation fee)
- bond (no more than four weeks' rent unless premises are furnished).

The landlord must give you a written statement of the costs before you sign the residential tenancy agreement.

Security deposits for electricity, gas and telephone are not part of the residential tenancy agreement – the tenant must organise for these to be paid to the relevant authorities.

RENT IN ADVANCE

The Act limits how much rent the landlord can ask you to pay in advance.

- If the rent is \$300 per week or less, you can be asked to pay up to two weeks' rent in advance.
- If the rent is more than \$300 per week, you can be asked to pay up to a month in advance.

It is an offence to charge more than these amounts and the landlord faces a penalty if he or she does so.

A landlord can't demand further rent until rent falls due and they can't ask for a post-dated cheque.

RENT RECEIPTS

The landlord must give you rent receipts showing:

- the landlord's or agent's name
- your name
- the address of the property
- the period for which the rent is paid
- the date the rent is received
- the amount of rent paid.

A landlord does not have to give you a receipt if you pay rent into a bank or building society account or where rent is paid by automatic deduction.

MOVING IN

THE CONDITION REPORT

The landlord/agent must give you a condition report when you move in. The condition report describes the condition of the property. It must be filled in by the landlord and the tenant at the start and the end of the tenancy.

The landlord must give you two copies of the condition report – one to return to the landlord and one for you to keep. You have seven days' to complete and return the condition report.

Take time to inspect the condition of the property and fill out the condition report carefully. This will save you problems if the landlord disputes the return of your bond at the end of the tenancy.

Common problems include cracked windows, grease on the stove, marks on the walls and stains on the carpets. If repairs are needed, ask the landlord to do them and get their agreement in writing. There is also a section at the back of your condition report where you should list repairs which have been promised.

If the landlord doesn't give you a condition report, write a detailed report on the condition of the property yourself, and get a witness to sign and date it.

RENTAL ASSISTANCE

The Department of Housing has a rental assistance scheme called Rent start. This provides financial assistance for disadvantaged tenants in the private rental market, including money for bond, rent in advance and service connection fees. You can apply through your local office of the Department of Housing.

In certain instances, rental assistance can be sought through centrelink.

LANDLORD'S GENERAL RESPONSIBILITIES

The landlord must make sure that premises are reasonably clean, and fit to live in at the start of the tenancy. The landlord must then maintain the premises in a reasonable state of repair considering:

- the age of the premises,
- the amount of rent the tenant is paying, and
- the prospective life of the premises.

This does not mean that the premises must be let in perfect condition, or that the landlord must immediately attend to every small matter during the tenancy. The state of the property and level of repair expected should be in proportion to the premises' age and the amount of rent.

URGENT REPAIRS

Residential premises must always be 'fit to live in'. Landlords are obliged to organise any urgent repair, as soon as reasonably possible, after having been notified by the tenant of the fault or damage.

An urgent repair is any of the following:

- a burst water service
- a blocked or broken lavatory system
- a serious roof leak
- a gas leak
- a dangerous electrical fault
- flooding or serious flood damage
- serious storm or fire damage
- a failure or breakdown of the gas, electricity or water supply to the premises
- a failure or breakdown of any essential service on the premises for hot water, cooking, heating or laundering
- any fault or damage that causes the premises to be unsafe or not secure.

HOW TO GET URGENT REPAIRS CARRIED OUT?

Tenants can spend up to \$1,000 on urgent repairs (up from \$500 on 1 September 2006 under the Residential Tenancies Regulation 2006) and be reimbursed within 14 days by the landlord. The landlord or agent must first be given a reasonable opportunity to arrange the work, or if they cannot be reached, any properly qualified tradesperson nominated in the agreement should be contacted. Refer to your tenancy agreement for more information.

HOW TO GET NON URGENT REPAIRS CARRIED OUT

The following steps are recommended when you want to have repairs or other work carried out:

- Phone or speak to the landlord or agent in person, and explain what you think the problem is or what you would like done to the premises. Write down somewhere the date of all conversations and what was said. This will be important if the problem is not easily resolved.
- If the response is favourable write a letter to the landlord or agent confirming your view of what was agreed to in the conversation.
- If the response is negative, consider carefully if the problem is important enough to pursue the matter. If you believe it is, write a letter to the landlord or agent outlining what you want done. Give a reasonable time limit in which you expect the work to be carried out.
- If the work has not been done within a reasonable time write a final letter to the landlord or the agent explaining that you intend to apply to the Consumer, Trader & Tenancy Tribunal or seek the help of an advisory service.
- If all else fails you can apply to the Tribunal for an order that the landlord carry out work to maintain the premises in reasonable repair. The Tribunal can also grant compensation, or allow the rent to be paid to the Tribunal until the work has been completed.

***Smoke Alarm Regulation**

All homes in NSW are required to contain at least 1 smoke alarm installed

Commenced in NSW on 1 May 2006 (fine-free moratorium ended 1 November 2006).

The tenant is responsible for replacing batteries if needed however if for any reason cannot must contact the landlord. The landlord is responsible for replacing the battery if needed, however if they are physically unable to, they should contact the landlord as soon as they are aware it needs to be changed and the landlord must do it. Also, there is a section of the condition report where the presence of a smoke alarm can be noted.

Under no circumstances should you stop paying the rent.

ADDITIONAL TERMS

The standard written residential tenancy agreement has a section for 'Additional Terms'. The landlord cannot add terms which conflict with any laws. If a term is in conflict with the *Residential Tenancies Act*, it cannot legally be enforced by the landlord. Tenants should seek advice or can apply to the Consumer, Trader and Tenancy Tribunal to have the term declared invalid. Additional Terms that contradict the Act include: being required to steam-clean carpets when you leave, being responsible for repairs and penalties for late rent.

RESPONSIBILITIES OF TENANTS

The tenant must keep the premises in a reasonable state of cleanliness, having regard to the condition of the premises at the start of the tenancy. If the premises include a yard, the lawns and gardens must also be kept neat and tidy by the tenant.

Tenants must notify the landlord or agent of any damage to the premises as soon as possible regardless of who or what caused the damage. It is recommended that this notice be put in writing.

The tenant must not intentionally or negligently cause or permit damage to the premises. Negligence means forgetting to do something which a reasonable person would usually do in the circumstances, or doing something which a reasonable person would not do. In simple terms it is a lack of care or attention.

A tenant is also responsible for damage caused by other occupants of the premises or any person the tenant allows on the premises.

A tenant cannot, except with the landlord's written permission attach any fixture or make any renovation, alteration or addition to the premises. This ranges from small items such as putting picture hooks into the wall, adding locks or having a telephone installed, to larger matters like painting the whole premises.

Because a landlord has the right to refuse any requests by a tenant to add fixtures or otherwise change the look of the premises, tenants should discuss any proposals prior to moving in. Any consent by the landlord should be put in writing, preferably as an additional term of the agreement.

REMOVING FIXTURES

Fixtures added by tenants cannot be removed without the landlord's permission. If removing a fixture causes damage, the tenant is responsible for repairing the damage or compensating the landlord. If the landlord refuses to allow the fixture to be removed, the tenant must be compensated for the value of the fixture.

DISPUTE RESOLUTION

You should always try and resolve any disputes by communicating with the landlord or agent. In the event of this not being possible you will need to apply for a tribunal hearing at the Consumer Trader and Tenancy Tribunal (CTTT). An application fee is payable prior to the hearing regardless of the outcome. At the hearing the presiding member will ask you if you have tried to resolve the dispute mutually and if not you will be asked to leave the room and discuss your concerns together in a separate room.

If this proves unsuccessful, the member of the tribunal will hear the facts presented to him and will make an order based on those facts.

You may not necessarily get the order you are after therefore it is advisable that you have made a reasonable attempt at resolving this dispute before it is handed over to the member of the tribunal. The order that the member hands down is final, legally binding and there are no means of an appeal.

ENDING THE TENANCY

NOTICE OF TERMINATION

A tenancy will usually be terminated by either the landlord or the tenant giving notice to the other party. However, in certain circumstances the Tribunal may be required to make orders to terminate a tenancy.

A notice of termination must:

- be in writing
- state the address of the premises
- be signed and dated
- allow the required period of time
- give the date on which the tenant intends to, or is requested to, move out (NB: do not use words such as 'by' or 'on or before' in the notice)
- give full details of all breaches (if any) or reasons for ending the agreement.
- and, if given to a tenant, include a statement that information about their rights and obligations can be found in the tenancy agreement.

The notice can be posted or given personally. A notice cannot be stuck to or put under a door by the person sending the notice. **A notice cannot be given to a child under the age of 16.**

If the notice is sent by post at least 4 working days (not including the day the notice was sent) should be added to the amount of notice, to allow time for the notice to be delivered.

The notice period is counted from the day after the notice is served.

NOTICE PERIODS

When the fixed term period of the agreement is due to run out, either party can give **14 days** notice to end the tenancy. This notice can be served up to and including the last day of the fixed term.

Once the fixed term period has ended, a tenant is required to give at least **21 days** notice, and the landlord must give at least **60 days** notice.

NOTICE ON SALE OF PREMISES

If the premises are sold and vacant possession is required in the contract of sale, the landlord must give the tenant at least **30 days** written notice (after the contracts of sale have been exchanged). This is only applicable to continuing tenancy agreements.

NOTICE OF BREACH

A notice of termination may be given at any time if either party seriously or persistently breaches a term of the agreement, or if the tenant is more than 14 days in arrears of rent. At least **14 days** notice must be given in writing.

BREAKING AN AGREEMENT EARLY

If a tenant wants to end their agreement early they should give as much notice as possible, preferably in writing (keep a copy of the letter). It is a good idea to state the exact date you intend to leave and that you want the landlord (or agent) to find a new tenant. Any assistance in finding a replacement tenant (such as making the property readily available for inspection) may help to reduce the costs involved.

Having said this, breaking an agreement can be costly. A landlord can claim compensation for any loss they suffer as a result of a tenant ending the agreement early. The costs a tenant could be liable for include:

- rent until new tenants move in or the existing agreement runs out (whichever happens first);
- a re-letting fee (usually one weeks rent) when the property is let by an agent who charges the landlord a fee for finding new tenants; and
- advertising costs.

For a landlord to successfully claim, they must be able to show that their loss was caused by the tenant breaking the agreement early, not by other factors. For example, if a tenant breaks the agreement just prior to the expiry date, the full amount of re-letting and advertising charges may not be able to be passed on since the landlord would have incurred these expenses shortly anyway. The landlord also has a duty to keep their loss to a minimum. This means that the landlord must make a reasonable effort to find a new tenant, otherwise any claim they later make may be reduced by the Consumer, Trader and Tenancy Tribunal.

UNDUE HARDSHIP

A tenant or landlord can at any stage of the tenancy apply to the Consumer, Trader and Tenancy Tribunal to end the agreement on hardship grounds. No prior notice is required. It is up to the party claiming hardship to satisfy the Tribunal that there are grounds for ending the agreement. If the Tribunal makes an order to end the tenancy, the party suffering hardship may be ordered to pay compensation to the other party.

FAIR WEAR AND TEAR

At the end of a tenancy the tenant is responsible for leaving the premises as nearly as possible in the same condition, fair wear and tear excepted, as set out in the original condition report.

Fair wear and tear means the deterioration that occurs over time with the reasonable use of the premises by the tenant and the ordinary operation of natural elements, even though the premises receive reasonable care and maintenance.

FINAL INSPECTION AND KEYS

At, or as soon as possible after, the end of the tenancy both the tenant and the landlord/agent must carry out a final inspection of the premises. The original condition reports should then be completed by both parties. However, if a reasonable opportunity is given to the other party to be there and they do not show up, the report may be filled out in their absence.

A tenant is responsible for returning all copies of keys given to them by the landlord or agent at the start of the tenancy.

BOND REFUNDS

During the tenancy, the rental bond is held by the Office of Fair Trading. At the end of the tenancy, after the final inspection, a claim for Refund of Bond Money form should be filled out by the landlord or agent and given to the tenant to sign. Claim forms can be obtained from the Renting and Strata Services Branch of the Office of Fair Trading, any Fair Trading Centre, Commonwealth Bank branches or the [Rental bonds](#) page of this website.

Any disagreement over how the bond is to be paid out should first be discussed between the parties.

If agreement cannot be reached, either party may send a claim form to the Renting and Strata Services Branch of the Office of Fair Trading, without the signature of the other party. The bond will not be paid out straight away.

BOND REFUNDS (cont)

A letter will be sent to the other party advising them of the claim and giving them 14 days to apply to the Tribunal to dispute the claim. If no reply is received within 14 days the bond will then be paid out.

No matter who applies to the Tribunal it is always up to the landlord to prove any claim on the bond.

NOTES